

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

PHILLIP L. HERCZECH,

Petitioner,

v.

**CIVIL ACTION NO. 3:12-CV-140
(JUDGE GROH)**

TERRY O'BRIEN, Warden,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge David J. Joel [Doc. 26]. By Standing Order, entered on March 24, 2000, this action was referred to Magistrate Judge Joel for submission of a proposed report and recommendation ("R & R"). Upon his initial review, Magistrate Judge Joel filed his R & R on June 5, 2013. In that filing, the magistrate judge recommends that the Respondent's Motion to Dismiss, Or, In the Alternative, for Summary Judgment [Doc. 21] be granted, and that the Petitioner's 28 U.S.C. §2241 petition be denied and dismissed with prejudice.

Pursuant to 28 U.S.C. §636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo*

review and the plaintiff's right to appeal this Court's Order. 28 U.S.C. §636(b)(1); **Snyder v. Ridenour**, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Joel's R & R were due by June 27, 2013. To date, no objections have been filed. Accordingly, this Court will review the R & R for clear error.

Upon careful review of the record, it is the opinion of this Court that the magistrate judge's Report and Recommendation [**Doc. 26**] should be, and hereby is, **ORDERED ADOPTED** for the reasons more fully stated therein. Accordingly, the Respondent's Motion to Dismiss, Or, In the Alternative, For Summary Judgment [**Doc. 21**] is hereby **GRANTED**, and the Petitioner's Petition under 28 U.S.C. §2241 is hereby **DENIED** and **DISMISSED WITH PREJUDICE**.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record and to mail a copy to the *pro se* plaintiff.

DATED: July 24, 2013.


GINA M. GROH
UNITED STATES DISTRICT JUDGE